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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1906.

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No. 199

METROPOLITAN LIFE INSURANCE COMPANY OF NEW YORK,
PLAINTIFF IN ERROR.

VERSUS

THE CITY OF NEW ORLEANS,
THE BOARD OF ASSESSORS FOR THE PARISH OF ORLEANS
AND
JOHN FITZPATRICK, STATE TAX COLLECTOR,
DEFENDANTS IN ERROR.

Error to the Supreme Court of the State of Louisiana.

BRIEF FOR THE PLAINTIFF IN ERROR.

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FOR PLAINTIFF IN ERROR.

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I.

STATEMENT OF CASE.

This suit was commenced on the 27th day of October, 1904, in the Civil District Court for the Parish of Orleans, by the present plaintiff in error against the defendants

in error, the City of New Orleans, the Board of Assessors for the Parish of Orleans and John Fitzpatrick, State Tax Collector. The object of the suit was, first, to reduce an assessment of ten thousand dollars on money in possession for the year 1904; and, second, to annul an assessment of ten thousand dollars on account of alleged credits for money loaned made for the same year. As the first of these items is not involved in the controversy before this Court, further reference to it will be omitted in this brief.

The petition, so far as pertinent to the issue before this Court, set forth that the plaintiff was a corporation created by and existing under the laws of the State of New York, and that it was domiciled in the City of New York; that its general offices were situated, and its general officers resided in said city and State; that, in the month of January, 1904, it made to the Board of Assessors for the Parish of Orleans its sworn return, as required by law, of property owned by it, and subject to taxation under the laws of the State of Louisiana; that said Board nevertheless proceeded to, and did, assess petitioner upon property not owned or held by it, or any of its officers in said State; that the assessment in the sum of ten thousand dollars made by said Board on account of credits for money loaned at interest was illegal, null and void, for the reason that any credits, bills receivable or money loaned by and due petitioner were not located and payable in Louisiana, but were located and payable and taxable only at petitioner's domicile, and were not subject,

under the Constitution of the United States and the laws of Louisiana, to taxation by the State of Louisiana; that said assessment was an attempt to extend the taxing power of the State of Louisiana beyond the territorial limits and jurisdiction thereof, and constituted a taking of property without due process of law, in violation of the Fourteenth Article of Amendment of the Constitution of the United States, which article petitioner expressly pleaded and claimed the benefit of.

The petition further alleged due application to the proper authorities for cancellation of the assessment so made, the persistence of such authorities in such illegal assessment, tender of the amounts deemed legally due, and threats of seizure by the defendants.

The petition prayed that the assessment in the sum of ten thousand dollars, on account of credits and money loaned at interest, be declared null and void, and that the defendants be severally restrained from collecting, or attempting to collect, any taxes based upon such assessment.

The defendants severally pleaded the general issue.

On the trial it was admitted (Tr., p. 14) that the assessment rolls of 1904 showed plaintiff in error assessed for ten thousand dollars for credits and money loaned at interest. Further admissions in the trial Court reduced the case to the single question of the legality of the assessment of credits in the shape of loans to residents of Louisiana on the security of policies of the plaintiff in error issued to them. On this subject the evidence

was that of a single witness, was quite undisputed, and may be thus summarized:

1. On the 1st day of January, 1904, the plaintiff in error had various loans outstanding and theretofore made to its policy-holders resident in Louisiana, aggregating the sum of ten thousand dollars. (Tr., pp. 9 and 10.)

2. In making these loans the following method was pursued: The policy-holder made application to McHardy, the local agent or superintendent of the company in New Orleans, for the loan desired by him. This application was thereupon forwarded by the agent to the officials of the company in New York. In case it obtained their approval, a note was then and there made out and forwarded to the agent of the company in New Orleans for signature by the borrower. When signed by the borrower, such note, with the policy designed to secure it, was delivered to the agent in New Orleans, and, in his own language,

> "I take the policy, with the note, and send it to the home office, *and if they pass upon it approvingly,* the check is sent to me personally." (Tr., p. 10.)

Such check is then delivered by the agent to the borrower.

3. The notes and policies, after being surrendered for transmission to the home office for approval, are retained in the City of New Orleans only for such time as is necessary to forward them in the regular course of business, and never longer than 24 to 48 hours. (Tr., p. 10.)

4. On the first day of January, 1904, the notes evidencing the loans aggregating the above-mentioned sum of ten thousand dollars were, with the policies securing them, all in New York in the hands of the home office. (Tr., p. 10.)

5. Between January 1, 1904, and April 10, 1904, loans amounting to $1,492 were made by the plaintiff in error to its Louisiana policy-holders. Such loans were made in precisely the same way as the loans made prior to January 1, 1904. (Tr., p. 11.)

6. Payment of interest on notes so taken, and of the principal at maturity, was made to the local agent in New Orleans. Such amounts as were collected by him as principal or interest were remitted to the home office, the note, when paid, being sent back to him for delivery to the maker. (Tr., pp. 12 and 13.)

The trial Court, in deciding the case, said:

> "The evidence also shows, and it is not disputed, that the only 'credits, money loaned and bills receivable,' belonging to the plaintiff, and intended to be taxed, consist of loans made to its policy-holders in this State and evidenced by their notes secured by pledge of its own policies, all of which, as soon as executed, are transmitted to the home office in the City of New York, and are returned to this city only for purposes of collection or renewal.
>
> "The authority under which it is proposed to assess and tax these notes is Section 7 of Act No. 170 of 1898, the last clause whereof reads as follows: '* * * And all bills receivable, obligations or credits arising from business done in this State are hereby declared assessable within this State, and at

the business domicile of said non-resident, his agent or representative.'

"This section* is identical in terms with the corresponding section of Act No. 106 of 1890, a statute which stood unrepealed when the Supreme Court of this State declared substantially, in *Liverpool, Etc., Ins. Co. vs. Board of Assessors,* 44 An. 760 and 770, that 'no legislative power existed to change the situs of debts due to non-residents' unless such debts had assumed some 'concrete form' in the evidence thereof and 'such evidences are situated in the State,' language tantamount to a declaration that this provision of the statute was repugnant to some higher law—*i. e.,* was 'unconstitutional'—(on) this high authority, then, I am constrained to declare that so much of the seventh section of Act No. 170 of 1898 as attempts to make assessable in this State any bills receivable due to non-residents, unless the same are 'situated in this State,' is unconstitutional and therefore void, and any assessment made in pursuance thereof is therefore null."

The trial Court accordingly rendered judgment for the petitioner.

On appeal to the Supreme Court of Louisiana, this judgment was, on the 20th day of November, 1905, reversed (Tr., p. 32), the Court expressly holding the Act of 1898 constitutional as applied and sought to be enforced.

A petition for a rehearing was filed, considered and denied (Tr., pp. 33 and 34), and the judgment thereupon became final. To reverse said judgment, this writ of error is prosecuted upon the following:

* NOTE—The entire section, with the corresponding section of the Act of 1890, is printed as an appendix of this brief.

II.

ASSIGNMENTS OF ERROR.

FIRST. The Court erred in holding that Sections 1 and 7 of Act No. 170 of the General Assembly of the State of Louisiana of the year 1898, in so far as the same attempt to authorize the taxation of property of the plaintiff situated, owned and held by it out of the State of Louisiana at the time of the assessment and levy by the defendants herein of the tax herein complained of, and at all times thereafter, was a valid statute; and erred in holding that said statute did not abridge the rights, privileges and immunities of said plaintiff, a citizen of the United States, and did not operate to deprive it of its property without due process of law, and to deny it the equal protection of the laws; all in violation of Section 1 of the Fourteenth Article of Amendment of the Constitution of the United States.

SECOND. The Court erred in enforcing, by its said judgment, said Sections 1 and 7 of Act No. 170 of the General Assembly of Louisiana of 1898, and in holding that the same operated to authorize the taxation of property of the plaintiff situated, held and owned by it outside of the State of Louisiana, and beyond the jurisdiction of said State at the time of the levy and assessment of the tax complained of herein, and at all subsequent times, for as much as said statute, as so enforced by the judgment herein, deprived said plaintiff of the privileges and immunities of a citizen of the United States, operated to deprive

it of its property without due process of law, and to deny to it the equal protection of the laws; all in violation of Section 1 of the Fourteenth Article of Amendment of the Constitution of the United States.

THIRD. The Court erred in holding that said Sections 1 and 7 of Act 170 of the General Assembly of the State of Louisiana of the year 1898, as construed, applied, and as sought to be enforced by the defendants, appellants herein, did not abridge the privileges and immunities of the plaintiff as a citizen of the United States, and did not deprive it of its property without the process of law, and deny to it the equal protection of the laws, and did not contravene Section 1 of the Fourteenth Article of Amendment of the Constitution of the United States.

The above assignments of error are insisted on here only in so far as they assert that the statute of Louisiana of 1898, on its face and as construed and applied, operates to deprive the plaintiff in error of its property without due process of law in violation of the Fourteenth Article of Amendment.

III.

ARGUMENT.

First Point.

The property sought to be taxed was beyond the limits and jurisdiction of the State of Louisiana, and the Statute of Louisiana of 1898, as construed and applied, deprives the plaintiff in error of its property without due process of law, in violation of the Fourteenth Article of Amendment.

(1)

Act No. 170 of the General Assembly of Louisiana of 1898 is entitled "An Act to provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted from taxation, and by prescribing the method of assessing and enforcing the same, and by enforcing payment thereof in the several parishes of the State and setting forth the purposes for which said levy is made."

By the first section of said Act it is provided as follows:

> "That for the calendar year A. D. one thousand eight hundred and ninety-eight, and for each succeeding calendar year, there are hereby levied annual taxes amounting in the aggregate to six mills on the dollar of the assessed valuation of *all property situated within the State of Louisiana*, except such as is expressly exempted from taxation by law, and the term *property* as herein used means and includes all real estate * * * (and) all rights, credits, bonds and securities of all kinds, all promissory notes, open accounts and other obligations; all cash."

Section 7 of said Act provides in part as follows:

> "That it is made the duty of the tax assessors throughout the State to place upon the assessment list all property subject to taxation, including merchandise or stock in trade on hand on the date of listing within their respective districts or parishes. • • • And, provided 'further,' in assessing mercantile firms, the true intent and purpose of this Act shall be held to mean the placing of such value upon stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in their aggregate a fair average on the capital, both cash and credits, employed in the business of the party or parties to be assessed. And this shall apply with equal force to any person or persons representing in this State business interests that may claim domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared as assessable within this State and at the business domicile of said non-resident, his agent or representative."

The above-mentioned sections constitute the authority for the assessment which is attacked in this case.

This statute, as now construed by the Supreme Court of Louisiana in this case, authorizes the taxation of every credit which arises from any business transaction conducted within the limits of the State of Louisiana, irrespective of either the nature of the credit or the physical situs of the evidence thereof. Any non-resident who

buys a bond or takes a note, or enters into any contract of any nature out of which a credit arises is, provided he happens to have some sort of place of business, or an agent with a place of business within the State, amenable to be taxed on such credit under the provisions of the act, irrespective of where the note, bond or contract is located.

This tax is expressly declared by the statute to be levied upon property "situated within the State," and is therefore a direct property tax. The Supreme Court of Louisiana has always treated it as such, as will appear from the decisions hereafter cited. And to sustain the statute it necessarily did this, since Article 229 of the Constitution of Louisiana, adopted in the year 1898, provides:

> "The General Assembly of Louisiana may levy a license tax, and in such case shall graduate the amount of such tax to be collected from the persons pursuing the several trades, professions, vocations and callings. All persons, associations of persons, and corporations pursuing any trade, profession, business or calling may be rendered liable to such tax, except clerks, ministers," etc.

And since Article 242 of the same instrument provides:

> "Corporations, companies or associations organized or domiciled out of the State, but doing business therein, may be licensed and taxed by a mode different than that provided for home corporations or companies, provided said different mode of license shall be uniform upon a graduated system, and said different mode of taxation shall be equal and uniform as to all such corporations, companies or associations that transact the same kind of business."

From which articles it follows that the tax in question, not being graduated, would, if intended as a license or occupation tax, be wholly void. That it was not so intended, is made further manifest by the passage of Act No. 127 of 1898 pursuant to the authority of the last cited article of the Constitution of that year. This act classifies the various occupations, including insurance, and imposes thereon the payment of a heavy license upon a graduated system. In view of these facts, we apprehend that this Court is bound to deal with the legislation as imposing a direct tax.

We come, then, to a discussion of the proposition which prefaces this argument. It is, however, proper and necessary at the outset to point out the irrelevance to the argument of certain matter contained in the transcript.

(2)

Reference has been made in the foregoing statement of the case to notes aggregating $1,492, executed and delivered to the plaintiff in error subsequent to the first day of January, 1904. The credits represented by these notes are not really involved in the assessment which is attacked. The proof of the execution, existence and location of such notes was made in the lower court in view of the doubt then in the mind of counsel as to the date to which the assessment would be held to relate. The assessment, as already stated, is made under the provisions of Act No. 170 of the General Assembly of Louisiana of 1898.

The Supreme Court of Louisiana has decided that the assessment contemplated by the statute is an assessment on the amount or condition of the taxpayer's property on the first day of January of the year in which the assessment is made, and not on its condition or amount on any day subsequent thereto, and prior to the closing of the assessment rolls.

Home Ins. Co. vs. Board of Assessors, 48 La. An. 451.
Southern Ins. Co. vs. Board of Assessors, 49 La. An. 401.
Palfrey vs. Tax Collector, 106 La. 707.
Palfrey vs. Sheriff, 109 La. 167.
Bunkie Brick Works, Etc., vs. Police Jury, 113 La. 1062.

There is, therefore, no room to contend, and we presume it will not be contended, that the assessment of ten thousand dollars for credits and money loaned at interest includes, or relates to, the loans aggregating $1,492, and made subsequent to January 1, 1904; or that it in fact relates to, or includes, any other loans than those amounting to ten thousand dollars, admitted to have been made prior to, and outstanding on that date. This was apparently the view of the Supreme Court of Louisiana.

As to the notes evidencing these latter loans, it will be observed that the evidence establishes that the obligations of such notes never attached or became enforceable within the limits of the State of Louisiana. The notes were signed, it is true, by the intending borrower in Louisiana; but the transaction was not consummated

until the notes were approved and accepted in New York. When approved by the officials of the company there, checks for the amounts borrowed—*i. e.*, the consideration of the notes so given—were forwarded to the local agent at New Orleans to be delivered to the maker. Prior to the borrower's receipt of such checks, the notes were without consideration, and could not be enforced. Hence, it appears that the notes in question were never for an instant of time physically present in the State of Louisiana as consummated and legally enforceable obligations. The case, therefore, first brings up this question:

Can the State of Louisiana tax, as the property of a New York corporation doing business in Louisiana, promissory notes which became its property in New York, and which at all times subsequent to the moment when they became its property were owned and held by it, and were, with the collateral securing them, physically located in the State of New York?

If this question is to be determined on authority, we feel safe in asserting that we shall be able to demonstrate that it must be answered in the negative.

(3)

The novel character of the doctrine enunciated in the instant case by the Supreme Court of Louisiana, and its denial of what it has itself heretofore held constitutional right, will, we believe, be best exhibited by a chronological reference to the decisions of that Court, arising upon the language of Section 7 of Act No. 106 of 1890, and

Section 7 of Act No. 170 of 1898, upon which this case arises, the section of the former being identical with that of the latter act.

Liverpool and London and Globe Ins. Co. vs. Board of Assessors, 44 La. An. 760 (1892): Assessment of credits of a foreign fire insurance company in the shape of uncollected premiums. *Held,* such credits were not property in the State, or within the State's jurisdiction, and that the statute as sought to be applied was unconstitutional.

Railey vs. Board of Assessors, 44 An. 765 (1892): The facts of this case are entirely similar to those in the case of *Liverpool and London and Globe Ins. Co.,* just cited. In deciding the question over again, the Court said:

> "There is no doubt of the legislative power to modify the rule of comity, *mobilia personam sequuntur,* in many respects. Movables having an actual situs in the State may be taxed there, though the owner be domiciled elsewhere. Even debts may assume such concrete form in the evidence thereof that they may be similarly subjected when such evidences are situated in the State, as in the case of bank notes, public securities, and, possibly, of negotiable promissory notes, bills of exchange or bonds.
>
> "But as to mere ordinary debts, reduced to no such concrete forms, they are not capable of acquiring any situs distinct from the domicil of the creditor, and no legislative power exists to change that situs so far as non-resident creditors are concerned. As said by the Supreme Court of the United States: 'To call debts property of the debtors is simply to misuse terms. All the property there can be in the nature of things, in debts, belongs to the creditors to whom they are payable, and follows their domicil,

wherever that may be. Their debts can have no locality separate from the parties to whom they are ing any *situs* distinct from the domicil of the cred due.' (State Tax on Foreign-Held Bonds, 15 Wall. 300.)

"A State has no more power to subject such debts due to foreign creditors to taxation than it would have to tax their corporeal movables situated at their foreign domicil."

Clason & Co. vs. The City of New Orleans, 46 La. An. (1894): Money standing to the credit of a firm domiciled in England, but doing business in New Orleans, is not within the jurisdiction of the State, and cannot be made the subject of taxation. (Following *Railey vs. Board of Assessors.*)

Bluefields Banana Co. vs. Board of Assessors, 49 An. 43 (1897): Assessment of cash in bank to the credit of a foreign corporation. The unconstitutionality of the act was not pleaded. (Opinion, p. 98.) *Held* (distinguishing the case of *Clason vs. City of New Orleans, supra*), that the assessment was warranted by the statute.

Liverpool and London and Globe Ins. Co. vs. Board of Assessors, 51 La. An. 1028 (1899): Assessment of a foreign fire insurance corporation on uncollected premiums. *Held,* reviewing the foregoing decisions:

"As to 'open accounts' with *(sic)* a foreign corporation for such protection as it may offer, the law to date has not localized them so as to render it possible to assess them here and sell them for taxes."

Comptoir National vs. Board of Assessors, 52 An. 1319 (1900): Assessment of non-negotiable notes located in the State and representing loans made in Louisiana by

the agent of a corporation doing business in the State. *Held*, following the decision of this Court in the suit of *City of New Orleans vs. Stempel*, 175 U. S. 309, that the assessment was valid, the Court saying:

> "The syllabus of that decision declares that *notes and mortgages, the owner of which is domiciled in another State, when they are kept within the State by an agent*, may *be subjected to taxation* by the law of the State in which they are held. A non-negotiable note is certainly sufficiently concrete in form to be an object of taxation. * * * If a person domciled abroad were to die leaving non-negotiable notes in this State in the hands of an agent, the presence of these notes in Louisiana would authorize the opening of the succession in Louisiana for the protection of Louisiana creditors." (Opinion, p. 1331.)

Monongahela River, Etc., Co. vs. Board of Assessors, 115 La. 563 (Nov. 1905): Assessment of due bills of a foreign corporation given by purchasers of coal held in New Orleans and there collected. *Held:*

> "It was within the power of the law-making authority of the State to tax an indebtedness which has taken a concrete form. The written instrument evidencing the indebtedness is 'left within the State in the hands of an agent of the non-resident owner.' So held in *New Orleans vs. Stemple*, 175 U. C. 317, 20 Sup. Ct. 110, 44 L. Ed. 174, as in the case before us for decision.
>
> "The case just cited was referred to in *Board of Assessors Case*, 191 U. S. 401; 24 Sup. Ct. 109, 48 L. Ed. 232, and the principles therein were reaffirmed."

These cases either expressly announce, or tacitly proceed, on the principle that taxation of credits due non-

residents and not within the State in some concrete form, but in the hands of the owner abroad, is unconstitutional and void. This principle, so repeatedly affirmed, the Supreme Court of Louisiana now denies, notwithstanding it has received the repeated sanction of this Court.

In the well-known case of **State Tax on Foreign-held Bonds, 15 Wall. 300,** it was held by this Court that bonds issued by a railroad company were property in the hands of the holders, and when held by non-residents were property beyond the jurisdiction of the State.

In **Railroad Co. vs. Jackson, 7 Wall. 262,** it was held that the State of Pennsylvania had no power to tax the interest of bonds secured by mortgage on property in that State and in the State of Maryland, when such bonds were held by a non-resident alien.

And in **Murray vs. Charleston, 96 U. S. 432-440,** arising out of an attempt on the part of the City of Charleston to subject a debt of the city, due a non-resident, to taxation, it was said:

> "Debts are not property. A non-resident creditor cannot be said to be, in virtue of a debt due to him, a holder of property within the city; and the city council was authorized to make assessments only upon the inhabitants of Charleston, or those holding taxable property within the same."

And in **Erie Railroad Co. vs. Pennsylvania, 153 U. S. 628-648,** it was said:

> "No principle is better settled than that the power of a State, even its power of taxation, in respect of property, is limited to such as is within its jurisdiction."

In the case of **New Orleans vs. Stempel, 175 U. S. 309,** which arose under Section 7 of the Act of 1898 here attacked, a tax was levied upon notes of the defendant in error (who was domiciled in New York), secured by mortgages on real estate in New Orleans; and these notes were physically located in New Orleans and were there in possession of an agent of the defendant in error, who collected the interest and principal as the same matured and deposited it to the credit of his principal in bank in New Orleans. The contention was advanced that the tax violated the due process of law clause of the Fourteenth Article of Amendment. This Court, passing on the contention, elaborately reviewed the above-cited decisions of the Supreme Court of Louisiana, and upon those and its own prior decisions held the assessment and tax valid on the express ground that the indebtedness, having taken a concrete form and become evidenced by notes and mortgages, and such notes and mortgages being physically within the State, the jurisdiction of the State to tax them was complete.

Mr. Justice Brewer, in the course of the opinion, after citing from the case of **State Tax on Foreign-held Bonds,** 15 Wall. 300, [illegible] in part, as follows:

> "But other personal property, consisting of bonds, mortgages, and debts generally, has no situs independent of the domicile of the owner, and certainly can have none where the instruments, as in the present case, constituting the evidences of debt, are not separated from the possession of the owners," said:
>
> "This last sentence, properly construed, is not to be taken as a denial of the power of the Legislature to establish an independent situs for bonds and mort-

gages when those properties are not in the possession of the owner; but simply that the fiction of law so often referred to declares their situs to be that of the domicile of the owner, *a declaration which the Legislature has no power to disturb, when in fact they are in his possession.*"

And further:

"It is well settled that bank bills and municipal bonds are in such concrete, tangible form that they are subject to taxation where found, irrespective of the domicile of the owner; are subject to levy and sale on execution, and to seizure and delivery under replevin; and yet they are but promises to pay—evidences of existing indebtedness. Notes and mortgages are of the same nature, and while they may not have become so generally recognized as tangible personal property, yet they have such concrete form that we see no reason why a State may not declare that, if *found within its limits*, they shall be subject to taxation." (Opinion, pp. 322, 323.)

It is further noteworthy that in this decision the Court referred to the susceptibility of choses in action, to seizure and sale, as furnishing a fair test of the existence or non-existence of the State's jurisdiction to tax them. After citing the Louisiana decisions (Opinion, p. 322) to the same effect, that notes and bills of exchange might be seized and sold, but that in order to effect a valid seizure, such bills or notes must be taken into the actual custody of the Sheriff, it said:

"Now, if property can have such situs within the State as to be subject to seizure and sale on execution, it would seem to follow that the State has power to establish a like situs within the State for purposes of taxation." (Opinion, p. 322.)

This is the very test which was laid down by the Supreme Court of Louisiana in the *Comptoir* case, already cited, when it pointed out that if a person domiciled abroad were to die leaving non-negotiable notes in Louisiana in the hands of an agent, the presence of such notes would authorize the opening of his succession in Louisiana for the protection of Lousiana creditors. We take it, therefore, that the converse of the proposition stated must also be true, viz.: That where bills and notes cannot be reached by seizure, and are not so present as to authorize the opening of a non-resident succession in case of death, by reason of being beyond the limits of the State and in the hands and at the domicile of the owner, the State cannot reach them by the exercise of its taxing power, even though it undertake to declare by statute the fiction that they shall be deemed present in the State for purposes of taxation.

The next case in this Court upon the statute in question is that of **Board of Assessors vs. Comptoir National V'Escompte, 191 U. S. 389 (1903)**: The defendant in error was a French corporation doing business in New Orleans. The assessment attacked as contravening the Fourteenth Article of the Amendment was one upon credits, as in the instant case. The credits in question arose out of loans made in New Orleans in the following manner: The intending borrower drew a check in the ordinary form on the Comptoir for the amount of the loan, depositing at the same time the required collateral and a power of attorney reciting, amongst other things,

that when it should become indebted to the Comptoir for money lent, or for any over-draft upon any check, the Comptoir was to have a lien on the security deposited, and the right, in case of failure to reimburse any overdraft or pay any indebtedness due, to sell such collateral and apply the proceeds to the satisfaction of the borrower's liability. It further appeared that when the money was paid it was remitted to Paris by exchange; that the agent had authority to make loans without consulting the Paris office; that the transactions were continuing; and that both the checks in question and collateral securing their payment were never transmitted to Paris, but were at all times kept in the hands of the agent, and were located in New Orleans. Upon this state of facts, which was, to all legal intents and purposes, identical with the state of facts in the *Stempel* case, the Court held the assessment and tax to be valid. Its conclusion upon a review of the decisions, including **Bristol vs. Washington Co., 177 U. S. 133,** and **Blackstone vs. Miller, 188 U. S. 189,** was thus stated:

> "From these cases it may be taken as a settled law of this Court that there is no inhibition in the Federal Constitution against the right of the State to tax property in the shape of credits *when the same are evidenced by notes or obligations, held within the State in the hands of an agent of the owner* for the purpose of collection or renewal, with a view to new loans and carrying on such transactions as a permanent business."
>
> (Opinion, pp. 403, 404.)

We take it that these two decisions announce with entire distinctness the proposition that property in the shape of credits, evidenced by notes or obligations located in another State and held in the hands of the owner there, cannot constitutionally be made the subject of State taxation.

It was, however, strenuously contended in the Supreme Court of Louisiana, and that Court apparently sanctioned the view (Tr., p. 30), that the decisions of this Court in **Bristol vs. Washington County** and **Blackstone vs. Miller** authorize the levy of taxes on credits, irrespective of whether or not the evidences thereof in concrete form are situated within the State. In substance this was a contention and decision that the principle of localization or *situs* announced and applied in the *Comptoir* and *Stempel* cases, and in the *Foreign-Held Bonds* case, as determinative of the question of jurisdiction had, in the cases mentioned, been repudiated by this Court, and the cases mentioned in effect overruled. Have they?

In the **Bristol case (177 U. S. 133)**, personal property of a citizen of New York, in the shape of notes payable at the office of her agents in Minnesota, where the mortgages securing the notes were held by the agents, and where the notes were returned from time to time for renewal, collection or foreclosure, the agents collecting the amounts thereof and making loans in the name of the principal, generally on their own judgment, and remitting to the principal the collections when required,

or investing them in new loans, was held taxable in Minnesota, notwithstanding the location of the notes in New York. Here it clearly appeared that the debts evidenced by the notes were localized and had obtained a *situs* in Minnesota by virtue of the physical presence there of the mortgages which secured them, both in the hands of the owner's agents, and (presumably) on the records of the State conveyance offices. It was from the sole viewpoint of whether the debt had acquired a *situs* in the State that the Supreme Court of Minnesota dealt with the case; and that it was from this viewpoint, also, that this Court dealt with it is evidenced by its citation of the case of Stempel, where the whole discussion and decision hinged upon whether the debts were or were not in such concrete form in Louisiana as to be susceptible to taxation. That the Court in the *Bristol* case, which was decided in the year 1900, did not mean to abandon the test applied in the *Stempel* case (decided in 1899) is evidenced by its decision in the *Comptoir* case, decided in the year 1903, where that test is again discussed at length and applied. We are then, we think, justified in concluding that the *Bristol* case announces no doctrine in conflict with that announced in the cases of Stempel and the Comptoir.

In the case of **Blackstone vs. Miller (188 U. S. 189)**, a person domiciled in Illinois died, leaving a deposit in a trust company of New York, and a debt due him by a firm domiciled in New York. These assets he disposed of by will, and the transfer was taxed by the State of

New York. This succession, or inheritance tax, was resisted and held valid by this Court on the broad ground that power over the person of the debtor conferred jurisdiction. The inapplicability of the decision to the case at bar is made pointed by the following language contained therein:

> "There is no conflict between our views and the point decided in the case reported under the name of *State Tax on Foreign-Held Bonds*, 15 Wall. 300. The taxation in that case was on the interest on bonds held out of the State. *Bonds and negotiable instruments are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it, by a tradition which comes down from more archaic conditions. Bacon vs. Hooker*, 177 Massachusetts, 335, 337. Therefore, considering only the place of the property, it was held that bonds held out of the State could not be reached. The decision has been cut down to its precise point by later cases. *Savings and Loan Society vs. Multnomah County*, 169 U. S. 421, 428; *New Orleans vs. Stempel*, 175 U. S. 309, 319, 320."

It is submitted, therefore, that the case at bar is within the principle announced and applied in the case of *State Tax on Foreign-Held Bonds*, and the cases of *Stempel*, of *the Comptoir*, and of *Bristol*, and within the exception declared to the principle laid down in *Blackstone vs. Miller;* and that this Court cannot sustain the judgment here without overruling the principle of the four cases first mentioned, and denying the exception admitted as obtaining in the last.

In concluding our argument on this branch of the case, it may be observed that the entire reasoning or method by which the Supreme Court of Louisiana reached the conclusion that the Statute of 1898 was constitutional, amounts to an admission that the property sought to be taxed was beyond the limits of the State. Its reasoning is not at all predicated upon any assumption or finding that such property was within the State in either a physical or legal sense. It is predicated upon one or both of these propositions: (a) Power over the person of the plaintiff in error, through its local representative or agent in Louisiana, was sufficient to give jurisdiction to tax (Tr., p. 31) (b) the Statute of 1898 contained, in effect, a condition that the plaintiff in error should pay taxes on credits of the nature of those involved in this case, and that condition it accepted by doing business in Louisiana. (Tr., pp. 30 and 31.)

Either proposition in effect affirms the physical absence from the State of the property sought to be taxed to be a wholly immaterial circumstance, and from such immateriality the constitutionality of the statute is deduced. In short, while the Court, in its decree, expressly decides, in its reasoning, it, in effect, begs, the constitutional question raised by the pleadings.

As to the first proposition, we do not deem that it requires any extensive refutation, and believe it sufficient to point out that the tax is not one imposed on the plaintiff in error as owner, but one imposed by the

terms of the statute on its property "situated within the State." The language of Mr. Justice Swayne, in **St. Louis vs. Ferry Company, 11 Wall. 423-430,** describes the situation with precision:

> "Upon looking into the enactments under which the taxes in question were assessed, it is obvious that their purpose was not to tax the property through the proprietor, but to tax the things themselves, by reason of their being 'within the city.' The point for us to decide, therefore, is whether they are covered by the legal provisions under which the taxes were imposed. If the taxing officer acted without authority, the taxes were invalid, and the city is not entitled to recover in this action."

But, even if the statute does attempt to impose a personal liability to pay taxes on property within the limits of the State of Louisiana, the plaintiff in error, being a resident of New York, without power to change its residence *(Insurance Co. vs. Francis,* 11 Wall. 210-216; *Railroad Co. vs. Koontz,* 104 U. S. 5-11; *Shaw vs. Quincey Mining Co.,* 145 U. S. 444; *Galveston, etc., Ry. Co. vs. Gonzales,* 151 U. S. 496), the tax is unconstitutional and void. *Dewey vs. Des Moines,* 173 U. S. 193-202.

SECOND POINT.

The Supreme Court of Louisiana cannot be held to have decided that any statute of Louisiana imposed on plaintiff in error, as a condition to doing business in Louisiana, payment of taxes on property in its hands beyond the jurisdiction of the State. But, if the Court did so decide, plaintiff in error may, nevertheless, assert in this Court that the statute is unconstitutional.

A second question arises, or does not arise, in this case, according to the view which may be taken of the meaning and effect of certain language above referred to contained in the opinion of the Supreme Court of Louisiana. The defendants in error, as already pointed out, pleaded the general issue in the trial Court. This pleading in Louisiana reduced the controversy to the question of the truth or falsity of the plaintiff's allegations of fact, and to the legal effect of those facts when and if proven.

Wells vs. St. Dizier, 9 La. An. 119.

In the Supreme Court of Louisiana, the appellants, defendants in error here, made the point in their brief (Tr., p. 28):

> That "a State can tax a foreign corporation, especially a foreign insurance company, to any extent or in any manner it sees proper, for the privilege of doing business in the State."

Apropos, apparently, of the issue thus for the first time sought to be injected into the case, the Supreme Court of Louisiana said:

> "There can be no doubt that the 7th section of the Act of 1898, quoted in the judgment of the District Court, announced the policy of the State touching the taxation of credits and bills of exchange, representing an amount of the property of non-residents equivalent or corresponding to said bill or credits which was utilized by them in the prosecution of their business in the State of Louisiana. The evident object of the statute was to do away with the discrimination theretofore existing in favor of non-residents, as against residents, and place them on an equal footing. The statute was not arbitrary, but a legitimate exercise of legislative power and discretion.
>
> "It is not contested that the State has a right, in consenting to allow foreign corporations to carry on business within her borders, to attach such conditions to such consent as she pleases. These foreign corporations are under no obligations to accept the terms; but, if they do accept them and carry on business in the State, they must comply with them. They cannot avail themselves of the benefit of the consent and repudiate the obligations attached thereto. The conditions of consent may refer to the matter of taxation, as well as to anything else. When foreign corporations come into the State for business purposes, they are constructively present in the State, and voluntarily place themselves within the jurisdiction of the State, and accept and subject themselves to the laws thereof."

In view of the decree (Tr., p. 32), which proceeds on the single express ground that the Act of 1898 is con-

stitutional, it would seem clear that the language quoted above was used by way of argument, and that it is not to be understood as deciding that the State of Louisiana has in fact undertaken to impose, as a condition upon foreign insurance companies doing business within its limits, payment of taxes on credits of the nature of those involved in this case. In determining whether the language quoted amounts to decision, we are not without what Lord Coke calls "the gladsome light of jurisprudence." The jurisprudence of Louisiana, on the interpretation and effect of a decree or judgment, is perfectly well settled. The opinion and reasons leading up to a decree are called motives *(motifs)*, and the judgment, or decree, is characterized as dispositive *(dispositif)*. In determining the extent of the meaning, or the effect, of a decree or judgment, the dispositive portion controls. It is the thing adjudged, the "*chose jugée,*" the basis of *res adjudicata.*

In **Keane vs. Fisher, 10 La. An. 261, 262,** the rule was applied. The lower Judge had predicated his judgment on some distinctions apparently made in a former opinion of the Supreme Court of Louisiana. (9 La. An., p. 70.) But the Court, in dealing with the surety in 10 An. 262, pointed out that the reasons given in the 9th Annual, the motives, formed no part of the judgment.

In **Hill vs. Bowman, 14 La. 445, 446,** the Court said, through Chief Justice Martin:

> "The original judgment affirmed by us absolutely must have its effect independently of any expression used by the Court in affirming it."

In **Plicque vs. Perret, 19 La. 318, 324,** the same rule was followed on a similar question, the Court saying:

> "The Court (Supreme Court of Louisiana) proceeded to affirm the judgment in all its parts. * * * We are bound to consider the judgment of the District Court as forming that of this tribunal just as much as if it had been copied into our formal decree affirming that of the Court below."

In **Slocomb vs. DeLizardi, 21 La. An. 355, 358,** where the question was argued by distinguished counsel, the same rule was followed, and the rule stated by Marcadé adopted, and which may be translated as follows:

> "It is well understood that it is in the dispositive portion of the judgment, and not in its motives, that the thing adjudged is found. * * * And more than this, the dispositive portion itself presents the thing adjudged only respecting those points actually decided, and not those merely announced. It is by examining the questions on which the parties were in controversy, and which their contest presented —*quid judicandum*—that we easily come to understand what has been adjudged—the *quid judicatum.*"

Applying these elementary rules, we find that the question on which the parties were in controversy was the question of the constitutionality *vel non* of the Act of 1898; that this was the only question determined by the decree, and that the proposition contained in the language cited was a mere "enunciation," or *dictum,* of the Supreme Court of Louisiana, and not necessary to, or really involved in, the decision reached. If we are correct in this view, then this brief might properly end

here; but, as this Court may differ with us, we proceed to consider the language in question on the assumption that it amounted to a decision of the proposition that the Statute of 1898, attacked, makes payment of taxes on foreign credits of the nature of those involved here a condition on the right of the plaintiff in error to do business in Louisiana.

The Court speaks of the right of the State, in consenting to allow foreign corporations to carry on business within her borders, to attach such conditions to such consent as she pleases, and then proceeds to state that, when foreign corporations come into the State for business purposes, they are constructively present there, voluntarily place themselves within its jurisdiction, and subject themselves to the laws thereof. The Court does not, in the language cited, or elsewhere in its opinion, undertake to define the conditions to which it refers; nor does it anywhere point out or affirm the existence of any statute that imposes upon foreign corporations generally, or foreign insurance companies in particular, as a condition to doing business in Louisiana, either a general express acceptance of all the statutes of the State, or any specific express acceptance of its statutes relating to taxation; nor will it be asserted by opposing counsel that there is, or ever has been, a statute in Louisiana which contained, or expressly imposed, any such condition.

The language, then, of the Supreme Court of Louisiana can, if it intended to and did decide that the plaintiff

in error was, in doing business in Louisiana, operating under and subject to a condition that it would pay taxes on credits of the nature of those here involved, can mean only this: That Section 7 of the Act of 1898 contains or implies such condition, and that the plaintiff in error, by voluntarily doing business in Louisiana in the year 1903, had impliedly accepted the terms and subjected itself to the operation of said Section 7 in such sense as to preclude it from ever questioning the constitutionality thereof. If this was decided, it is tantamount to a decision that no corporation, undertaking to do business in a State other than the State of its creation, can ever be heard to question the constitutionality of any statute of that State; for, if it enters the State with the statute on the books, it will be said to agree that its terms are constitutional, and shall, *quoad* it, be always enforceable; and, if the statute is passed after its entrance, and it continues business in the State, it will be said to have so conducted itself as to justify the inference of a similar consent. In its ultimate analysis, this theory undertakes to strip the foreign corporation of the last vestige of constitutional protection, for it says to it: "Your entry into the State shall be deemed the equivalent of a stipulation on your part never to contest as unconstitutional any statute in existence at the time of your entry; your abiding in the State under the State's license for any period of time whatever after the passage of any statute which applies to you shall

be deemed the equivalent of a stipulation on your part never to contest such statute as unconstitutional; as to you, the Federal Constitution shall be non-existent."

We submit that this Court will not sanction so radical and far-reaching a doctrine. It is well settled here that the State cannot by statute validly exact from a foreign corporation, as a condition, either to entering the State, or as a condition to continuing to do business therein, an agreement or stipulation that it will not avail itself of the rights and privileges conferred on it by the Federal Constitution.

Insurance Co. vs. Morse, 20 Wall. 445.
Doyle vs. Continental Ins. Co., 94 U. S. 335.
Barrow vs. Burnside, 121 U. S. 186.
Southern Pacific Co. vs. Denton, 146 U. S. 202.
Barrow Steamship Co. vs. Kane, 170 U. S. 100.
Blake vs. McClung, 172 U. S. 239.
Security Mutual Life Ins. Co. vs. Prewitt, 202 U. S. 257.

The utmost that the State can do is to provide that any foreign corporation which asserts a right or privilege under the Federal Constitution shall be deprived of its license to do business in the State. Its power, in other words, may be exerted to punish, but not to prevent, an appeal to constitutional immunity.

Security Mutual Life Ins. Co. vs. Prewitt, supra.

As said by Mr. Justice Harlan, in **Blake vs. McClung, 172 U. S. 239:**

"* * * Generally speaking, the State has the power to prescribe the conditions upon which for-

eign corporations may enter its territory for purposes of business. Such a power cannot be exerted with the effect of defeating or impairing rights secured to citizens of the several States by the supreme law of the land. Indeed, all the powers possessed by the State must be exercised consistently with the privileges and immunities granted or protected by the Constitution of the United States."

See *Cable vs. U. S. Life Ins. Co.*, 191 U. S. 288.

It is, therefore, clear that if the State of Louisiana had (as it has not) exacted of the plaintiff in error, either prior to its entrance into Louisiana, or prior to the renewal of its license for the year 1904, an express stipulation accepting all of the statutes of the State, and agreeing to forego the right to contest them, or any of them, as denying the rights and privileges secured by the Federal Constitution, such stipulation would be unenforceable, and the statute, so far as it exacted it, void.

A case precisely in point is that of **Cargill Company vs. Minnesota, 180 U. S. 452.** Action was brought by the State to prevent the plaintiff from operating an elevator and warehouse, owned by it in Minnesota, until it should have obtained a license from the Railroad and Warehouse Commission. Such action was predicated upon a statute which, amongst other things, provided that it should be unlawful to receive, ship, store or handle any grain in any elevator or warehouse unless, the owner or owners thereof should have procured

a license therefor from the State Railroad and Warehouse Commission. The statute further provided that every person, company or corporation receiving such license should "be held to have accepted the provisions of this act, and thereby to have agreed to have complied with the same." The defense was that the statute was repugnant to the Constitution of the United States. In deciding the case, this Court sustained the power of the State, so far as the Constitution of the United States is concerned, to require a license for the privilege of carrying on the business of warehousing within its limits, and used the following language:

> "The defendant, however, insists that some of the provisions of the statute are in violation of the Constitution of the United States, and, if it obtained the required license, it would be held to have accepted all of its provisions, and (in the same words of the statute) 'thereby to have agreed to have complied with the same.' The answer to this suggestion is that the acceptance of a license, in whatever form, will not impose upon the licensee an obligation to respect or to comply with any provisions of the statute, or with any regulations prescribed by the State Railroad and Warehouse Commission that are repugnant to the Constitution of the United States. A license will give the defendant full authority to carry on its business in accordance with the valid laws of the State, and the valid rules and regulations prescribed by the commission. If the commission refused to grant a license, or if it sought to revoke one granted, because the applicant in the one case, or the licensee in the other, refused to comply with statutory provisions, or with rules or

regulations inconsistent with the Constitution of the United States, the rights of the applicant, or the licensee, could be protected and enforced by appropriate judicial proceedings."

If, then, such an express agreement and stipulation not to assert a Federal right or privilege, and the statute requiring it, would be void, it follows that that sort of acceptance of the statute which the Supreme Court of Louisiana apparently had in mind as resulting from the mere doing of business in the State, in the face of and during the existence of the statute, cannot have the effect of depriving the plaintiff in error of the right to assert that the statute contravenes the Constitution.

This was decided in the case of **Carroll vs. Greenwich Ins. Co., 199 U. S. 401, 409,** which is very much in point, and where the Court said:

"We assume, further, that the position of the plaintiff is not affected by the fact that they are foreign corporations. The act is in general terms and hits all insurance companies. If it is invalid as to some, it is invalid as to all. *United States vs. Ju Toy,* 198 U. S. 253, 262, 263. That the requirements of the act might have been made conditions to foreign companies doing business in the State *(Fidelity Mutual Life Ins. Co. vs. Mettler,* 185 U. S. 308; *Waters-Pierce Oil Co. vs. Texas,* 177 U. S. 28) is immaterial. As we understand the statute, the Legislature did not attempt to reach the result in that way. A company lawfully doing business in the State is no more bound by a general unconstitutional enactment than a citizen of the State. *W. W. Cargill Co. vs. Minnesota,* 190 U. S. 452."

In fine, if we correctly appreciate the decisions of this Court, the State cannot by any device cut off the right to appeal for protection to the Constitution of the United States; it can only provide, by way of penalty, the withdrawal of the license of any foreign corporation which makes such an appeal. In other words, it may drive out, but it cannot destroy. The State of Louisiana has not undertaken to drive out the plaintiff in error. On the contrary, the company has, for years past, and now is, doing business in the State under the State's license; and the State cannot, after inviting it to enter its borders and do business, and after granting it such a license, thereby admitting its compliance with all statutory requirements, now claim that it came into the State, as it were, naked and unshielded by the Constitution.

CONCLUSION.

Summarizing the points made in the foregoing argument, we submit:

(*a*) That a tax on property beyond the jurisdiction of the State amounts to a taking of property without due process of law, contravenes the Fourteenth Article of Amendment, and is void.

(*b*) That the debts on which the plaintiff in error is sought to be taxed, represented by promissory notes of residents of Louisiana, in its actual possession in New York at the time of the levy, were property beyond the jurisdiction of the State of Louisiana.

(*c*) That, while it may be true that the State has power to abolish the fiction that movables follow the person of the non-resident owner, it can only do so in case such movables become separated from the person of such non-resident, and they or their paper representatives are permitted by him to enter or remain within the limits of the State.

(*d*) That the case before the Court properly presents for decision the single question: Is the Louisiana Statute of 1898 constitutional as construed and applied?

(*e*) That, in any event, an express agreement, exacted by the State of a foreign corporation not to invoke the protection of the Constitution, is void; and, the fact that the plaintiff in error transacted business in Louisiana in the face of the general statute, now attacked, can no more deprive it of the right to claim that the statute

contravenes its constitutional rights than if it had expressly agreed to accept and be bound by its provisions.

We may add that, while the actual amount involved in this case is small, the principle is of great importance to a large class of taxpayers in Louisiana. Upon the strength of the decision of the Supreme Court of Louisiana sought to be reviewed, all foreign corporations doing business in the State have been singled out for an enormous increase in assessment; that of the plaintiff in error alone, for the year 1906, being $285,000, against an average of $10,000 in prior years. These assessments are now being contested in scores of suits, most of which will stand or fall with this case.

We ask that the judgment be reversed, and the case remanded.

CHARLES POLLARD COCKE,
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Of Counsel.

APPENDIX A.

Act No. 170 of the General Assembly of Louisiana of 1898, entitled:

> "An Act to provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted from taxation, and by prescribing the method of assessing and collecting the same, and of enforcing payment thereof in the several parishes of the State, and setting forth the purposes for which said levy is made."

* * * * * * * * *

Section 7. Be it further enacted, etc., That it is made the duty of the Tax Assessors throughout the State to place upon the assessment list all property subject to taxation, including merchandise or stock in trade on hand at the date of listing within their respective districts or parishes; and if any Tax Assessor shall intentionally or knowingly, or through gross negligence, omit any taxable property from the assessment list, or permit the same to be omitted therefrom, he and his sureties *in solido* shall be liable on his official bond for the full amount of the taxes due on the property so omitted from the list, together with ten per cent. per annum interest thereon from the maturity of said taxes, ten per cent. attorney's fees on the amount of the judgment

recovered against him, and all costs of the suit; provided, that the true intent and meaning of this section is that all crops, whether growing or gathered, shall be considered as being attached to the realty while in first hands, and shall not be separately taxed while in possession of the lessor, or his agent, and no property shall be taxed twice in the same year; and provided, further, that, in assessing mercantile firms, the true intent and purpose of this act shall be held to mean the placing of such value upon the stock in trade, all cash, whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in their aggregate a fair average on the capital, both cash and credit, employed in the business of the party or parties to be assessed. And this shall apply with equal force to any person, or persons, representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicile of said non-resident, his agent or representative. It shall be the duty of the Assessor to examine into and acquaint himself with the insurance carried upon the property, and, in determining the value of said stock or assets, the average amount of insurance

carried by the assured during the twelve months preceding the date of valuation of same shall be by the Assessor considered in determining the value of said property.

Every insurance company doing business in this State shall, on or before the 1st day of March, in each year, render to the Secretary of State a report, signed and sworn to by its president and secretary, of its condition upon the preceding 31st day of December, which shall include a detailed statement of its assets and liabilities on that day; the amount and character of business transacted in this State; moneys received and expended during the year, and such other information and in such form as he may require.

The Assessor shall also inquire into the purchase price paid for the real property, when acquired by the owner, and ascertain and acquaint himself with any sales or transfers of property of like description or value made or effected in the vicinity, within the year, or years, next preceding the listing for assessments then being made, and the price paid for property at such sales or transfers shall be considered by the Assessor in determining the value of the real property to be listed for assessment.

APPENDIX B.

Act 106 of the General Assembly of Louisiana of 1890, entitled:

> "An Act to provide an annual revenue for the State of Louisiana by the levying of annual taxes upon all property not exempted by law from taxation, and by prescribing the methods of assessing and collecting the same, and of enforcing payment thereof in the several parishes of the State, and setting forth the purposes for which said levy is made."

* * * * * * * * *

Section 7. Be it further enacted, etc., That it is made the duty of the Tax Assessor throughout the State to place upon the assessment list all property subject to taxation, including the merchandise or stock in trade on hand at the date of listing, within their respective districts or parishes; and if any Tax Assessor shall intentionally or knowingly, or through gross negligence omit any taxable property from the assessment list, or permit the same to be omitted therefrom, he and his sureties *in solido* shall be liable on his official bond for the full amount of the taxes due on the property so omitted from the list, together with ten per cent. per annum interest thereon from the maturity of said taxes, ten per cent. attorney's fees on the amount of the judgment recovered against him, and all costs of the suit; provided, that all crops, whether growing or gathered, shall be considered as being attached to the realty while in first hands, and shall not be separately taxed while in the

possession of the lessor, or his agent, and no property shall be taxed twice in the same year; and provided, further, that, in assessing mercantile firms, the true intent and purpose of this act shall be held to mean the placing of such value upon the stock in trade, or cash, whether borrowed or not, money at interest, open accounts, credits, etc., as will represent in their aggregate a fair average on the capital, both cash and credit, employed in the business of the party, or parties, to be assessed. And this shall apply with equal force to any person, or persons, representing in this State business interests that may claim a domicile elsewhere, the intent and purpose being that no non-resident, either by himself or through any agent, shall transact business here without paying to the State a corresponding tax with that exacted of its own citizens; and all bills receivable, obligations or credits arising from the business done in this State are hereby declared assessable within this State, and at the business domicile of said non-resident, his agent or representative.